

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of)
) WT Docket No. 96-199
Amendment of Part 90)
Concerning the Commission's)
Finder's Preference Rules)

To: The Chief, Wireless
Telecommunications Bureau

RECEIVED
NOV 18 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

COMMENTS IN OPPOSITION TO NPRM

J & M PAGING, INC. (J&M), by its attorney, respectfully submits its comments in opposition to portions of the Notice of Proposed Rule Making (NPRM) in the captioned proceeding, FCC 96-383, adopted September 17, 1996 and released September 27, 1996. In opposition thereto, J&M states as follows:

The NPRM explicitly proposes to eliminate the finder's preference program for the 220-222 MHz band (NPRM at ¶9); but ambiguously references the 470-512 MHz, 800 MHz and 900 MHz bands and then goes on to seek "comment on whether the finder's preference program should be discontinued in its entirety" (NPRM at ¶10).

Moreover, the NPRM goes on to "propose to retain the discretion to dismiss pending finder's preference requests for any services in any frequency bands in which we decide to

No. of Copies rec'd 0+9
LHA BODE

eliminate the finder's preference program as a result of this proceeding" (NPRM at ¶11) (emphasis added), thus suggesting that the entire finder's preference program (which is unique to Part 90 of the Commission's rules) really may be at issue in this proceeding. The NPRM argues that "persons with finder's preference requests on file would not be substantially harmed because there would be an opportunity to apply for the unused frequencies once they become available for licensing" (id.) (emphasis added); and that, specifically with reference to the 220-222 MHz band, such persons "may apply for the geographic licenses covering the areas that are subject of their finder's preference requests." (Id.).

J&M has a finder's preference request pending in File No. 96F191 for the exclusive private carrier paging frequency 929.0125 MHz in southern California. The Commission ruled on April 30, 1996 that J&M had made out a *prima facie* case for its request, and a final ruling in the case is now pending. As noted above, the NPRM is ambiguous as to whether or not the outcome of this proceeding may directly or indirectly affect the processing of J&M's request for 929.0125 MHz. Nonetheless, the NPRM's supporting analysis is so thoroughly wrong-headed with respect to the treatment of pending requests that J&M is constrained to comment whether or not the NPRM will affect its request.

It is impossible to understand how the NPRM can contend with a straight face that persons with pending finder's preference requests "would not be substantially harmed" by their dismissal, because they would have "the opportunity to apply for the unused frequencies once they become available for licensing". As the Commission well knows, parties filing such requests must expend substantial time and resources -- prior to filing such requests -- to investigate the facts pertaining the target licensee's failure to construct its authorized facilities or to place or keep them in operation. Assuming the allegations uncovered by their investigation prove out, the requesting party then obtains a "dispositive preference" for the frequency(ies) in question, i.e., is guaranteed a license for the frequency(ies) assuming it timely follows through with the procedures and requirements specified in the rules.

By contrast, what the NPRM proposes is that after expending the substantial time and resources to identify the unused spectrum for the Commission (and doing so in anticipation of receiving a "dispositive preference" for it), the party would instead obtain only the opportunity to bid against the rest of the world in an auction for the geographic license. Contrary to the NPRM's professed claim that a party "would not be substantially" harmed by this turns of events, such a retroactive

change in policy would not only be egregiously unfair to the parties which expended their time and resources in reliance upon receiving the benefits of their investigation, but also would be impossible for the Commission to lawfully justify.

Under these circumstances, the Commission should promptly and absolutely abandon its attempt to undercut pending requests for finder's preferences, and should instead determine to promptly process them to their natural conclusion under existing rules and policies.

Respectfully submitted,

J & M PAGING, INC.

A handwritten signature in cursive script, appearing to read "Kenneth E. Hardman", written in dark ink.

By: Kenneth E. Hardman

Its Attorney

MOIR & HARDMAN
2000 L Street, N.W.
Suite 512
Washington, DC 20036-4907
Telephone: (202) 223-3772
Facsimile: (202) 833-2416

Dated: November 18, 1996